U.S. Customs Service

Treasury Decisions

19 CFR Part 12

(T.D. 02–30)

RIN 1515–AD12

EXTENSION OF IMPORT RESTRICTIONS IMPOSED ON ARCHAEOLOGICAL AND ETHNOLOGICAL MATERIALS FROM PERU

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: In T.D. 97–50, the Customs Regulations were amended to reflect the imposition of import restrictions on certain archaeological and ethnological materials originating in Peru. These restrictions were imposed pursuant to an agreement between the United States and Peru that was entered into under the authority of the Convention on Cultural Property Implementation Act in accordance with the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Recently, the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, determined that conditions continue to warrant the imposition of these import restrictions for a period of five years from June 9, 2002. Thus, this document amends the Customs Regulations to reflect that the import restrictions continue. T.D. 97–50 contains the Designated List of Archaeological and Ethnological Materials that describes the articles to which the restrictions and this extension of restrictions apply.

EFFECTIVE DATE: This regulation becomes effective on June 6, 2002. The import restrictions continue and remain in effect for five years from June 9, 2002.

FOR FURTHER INFORMATION CONTACT: (Regulatory Aspects) Joseph Howard, Intellectual Property Rights Branch (202) 927–2336; (Operational Aspects) Al Morawski, Trade Operations (202) 927–0402.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to the provisions of the 1970 UNESCO Convention, codified into U. S. law as the Convention on Cultural Property Implementation Act (Pub. L. 97–446, 19 U.S.C. 2601 *et seq*)(the Act), the United States entered into a bilateral agreement with the Republic of Peru on June 9, 1997, concerning the imposition of import restrictions on certain pre–Columbian archaeological materials of Peru dating to the Colonial period and certain Colonial ethnological material from Peru. The U.S. Customs Service issued T.D. 97–50 (62 FR 31713, June 11, 1997) amending § 12.104g(a) of the Customs Regulations (19 CFR 12.104g(a)) to reflect the imposition of these restrictions for a period of five years.

Prior to the issuance of T.D. 97–50, Customs issued T.D. 90–37 (55 FR 19029, May 7, 1990) imposing emergency import restrictions on certain archaeological materials of Peru from the Sipan Archaeological Region forming part of the remains of the Moche culture. Under T.D. 90–37, § 12.104g(b) (19 CFR 12.104g(b)) of the regulations pertaining to emergency restrictions was amended accordingly. This emergency protection was extended in T.D. 94–54 (59 FR 32902, June 27, 1994). Subsequently, the archaeological materials covered by T.D. 90–37 were subsumed in T.D. 97–50 when it was published in 1997, at which time the emergency restrictions of T.D. 90–37 (as extended by T.D. 94–54) were removed from § 12.104g(b).

On March 5, 2002, the Assistant Secretary of Educational and Cultural Affairs, Department of State, after considering the findings and recommendations of the Cultural Property Advisory Committee and concluding that the cultural heritage of Peru continues to be in jeopardy from pillage of the archaeological and ethnological materials subject of the import restrictions of T.D. 97–50, made the necessary determinations to extend the import restrictions for an additional five years (in the Determination to Extend the Memorandum of Understanding Between the United States of America and the Government of Peru Concerning the Imposition of Import Restrictions on Archaeological Material from the Prehispanic Cultures and Certain Ethnological Material from the Colonial Period of Peru, Signed on June 9, 1997). Accordingly, Customs is amending § 12.104g(a) to reflect the extension of the import restrictions.

The Designated List of Archaeological and Ethnological Materials from Peru describing the materials covered by these import restrictions is set forth in T.D. 97–50. The list and accompanying image database may also be found at the following internet website address: *http://e.usia.gov/education/culprop*.

It is noted that the materials identified in T.D. 97–50 as "certain pre-Columbian archaeological materials of Peru dating to the Colonial period and certain Colonial ethnological material from Peru" are referred to in the Determination to Extend as "Archaeological Material from the Prehispanic Cultures and Certain Ethnological Material from the Colo-

nial Period of Peru." The materials identified in T.D. 97–50 and those identified in the Determination to Extend are one and the same materials.

The restrictions on the importation of these archaeological and ethnological materials from Peru are to continue in effect for five years from June 9, 2002. Importation of these materials continues to be restricted unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met. For example, these materials may be permitted entry if accompanied by appropriate export certification issued by the Government of Peru, or documentation showing that exportation from Peru occurred on or before June 11, 1997, or, with respect to materials from the Sipan archaeological region, on or before May 7, 1990. See 19 U.S.C. 2606(b)(1) and (2)(B); 19 CFR 12.104c(a) and (c).

Inapplicability of Notice and Delayed Effective Date

Because the amendment to the Customs Regulations contained in this document extends import restrictions already imposed on the above-listed cultural property of Peru by the terms of a bilateral agreement entered into in furtherance of a foreign affairs function of the United States, pursuant to the Administrative Procedure Act (5 U.S.C. 553(a)(1)), no notice of proposed rulemaking or public procedure is necessary and a delayed effective date is not required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*.) do not apply. Accordingly, this final rule is not subject to the regulatory analysis or other requirements of 5 U.S.C 603 and 604.

Executive Order 12866

This amendment does not meet the criteria of a "significant regulatory action" as described in E.O. 12866.

Drafting Information

The principal author of this document was Bill Conrad, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service.

List of Subjects in 19 CFR Part 12

Customs duties and inspections, Imports, Cultural property.

Amendment to the Regulations

Accordingly, Part 12 of the Customs Regulations (19 CFR Part 12) is amended as set forth below:

PART 12—[AMENDED]

1. The general authority and specific authority citations for Part 12, in part, continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

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Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

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2. In § 12.104g(a), the list of agreements imposing import restrictions on described articles of cultural property of State Parties is amended in the entry for Peru by adding "extended by T.D. 02–30" immediately after "T.D. 97–50" in the column headed "T.D. No.".

ROBERT C. BONNER,
Commissioner of Customs.

Approved: June 3, 2002.

TIMOTHY E. SKUD,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, June 6, 2002 (67 FR 38877)]

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19 CFR Part 10

(T.D. 02–31)

RIN 1515–AC59

CIVIL AIRCRAFT

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations concerning the duty-free entry of civil aircraft merchandise to reflect amendments to General Note 6 of the Harmonized Tariff Schedule of the United States made by the Miscellaneous Trade and Technical Corrections Act of 1996. The amendments allow an importer to claim duty-free admission of civil aircraft merchandise without submitting a certificate, or having one on file at Customs, at the time of entry. The amendments also allow an importer to make a post-entry claim for duty-free admission by filing a statement prior to liquidation of the entry or before the liquidation becomes final.

EFFECTIVE DATE: July 8, 2002.

FOR FURTHER INFORMATION CONTACT: Richard Wallio, Office of Field Operations, at (202) 927–9704.

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document amends § 10.183 of the Customs Regulations (19 CFR 10.183), which concerns Customs duty-free treatment of civil aircraft

merchandise. Section 10.183 implements General Note 6 of the Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), which implements the Agreement on Trade in Civil Aircraft (Title VI of the Trade Agreements Act of 1979, Pub. L. 96–39, 93 Stat. 144, July 26, 1979), to provide duty-free treatment for qualifying civil aircraft merchandise upon compliance with certain requirements. The term "civil aircraft merchandise" as used in this document covers merchandise that qualifies as "civil aircraft" under paragraph (b) of General Note 6, HTSUS, and thus is aircraft, aircraft engines, or ground flight simulators, including their parts, components, and subassemblies, that otherwise meet the requirements of paragraph (b).

General Note 6 of the HTSUS was amended by section 12 of the Miscellaneous Trade and Technical Corrections Act of 1996 (the Act), Pub. L. 104–295, 110 Stat. 3514 (October 11, 1996). Prior to the amendment, General Note 6 required that an importer entering merchandise duty-free under the General Note must file with Customs a written statement certifying that the merchandise: (i) is civil aircraft or has been imported for use in civil aircraft; (ii) will be so used; and (iii) has been approved for civil aircraft use by, or an application for approval has been submitted to, the Administrator of the Federal Aviation Administration (FAA) or by an airworthiness authority in the country of exportation (foreign airworthiness authority) if such approval is recognized by the FAA. General Note 6 defined the term "civil aircraft" as all aircraft other than aircraft purchased for use by the Department of Defense or the United States Coast Guard.

The Act amended General Note 6 to expand the definition of "civil aircraft." The Act also eliminated the statement (certification) filing requirement. The Act provided that a claim for duty-free treatment under General Note 6 is made by the importer by entering the merchandise under a tariff provision for which the program indicator "Free (C)" appears in the "Special" subcolumn of the tariff. (This is accomplished by placing the program indicator "C" on the entry summary.) This claim is deemed the importer's certification that the merchandise being entered is a civil aircraft or has been imported for use in a civil aircraft and will be so used. No additional statement is necessary to file.

Although the amendment eliminated the statement filing requirement, it requires that an importer maintain documentation to support the claim. It also provides that an importer may amend an entry or file a written statement to claim duty-free treatment under General Note 6 any time before the liquidation of the entry becomes final. A liquidation becomes final 90 days after the date notice of liquidation is given or transmitted to the importer (or its agent or consignee).

On June 29, 2000, Customs published a notice of proposed rulemaking (the NPRM) in the Federal Register (65 FR 40067) proposing to amend § 10.183 to reflect the statutory amendments made to General Note 6 by the Act. Section 10.183 of the Customs Regulations (19 CFR 10.183) currently provides that a written statement must be filed, along

with supporting documentation, with each entry summary or be on file with Customs at the time of entry as a blanket statement at the port where the entry is filed (19 CFR 10.183(c)). The regulation also provides that the statement could not be treated as a missing document that could be produced later under bond (under 19 CFR 141.66) and that failure to timely file the statement or to have a valid blanket statement on file at the port would result in a dutiable entry (19 CFR 10.183(c)(2)).

Summary of Proposed Amendment

The proposed amendment to § 10.183 was intended to conform the regulation to the statutory amendments made to General Note 6 by the Act. Thus, the proposed amendments: (1) expanded the regulation's coverage by broadening the description of civil aircraft; (2) eliminated the requirement that supporting documentation be filed with each entry summary; (3) required that supporting documentation be maintained in the importer's records; (4) eliminated the statement (certification) filing requirement; (5) allowed an importer to make a claim for duty-free admission under General Note 6 after the filing of an entry (that did not make a claim) but before its liquidation becomes final; and (6) provided that no interest attaches to refunds of duty resulting from post-entry claims.

DISCUSSION OF COMMENTS

The NPRM requested comments on the proposed amendments. Two commenters responded with various comments and recommendations that are summarized and responded to below.

Comment:

One comment concerned the meaning of proposed § 10.183(e), which provides that proof of end use of the entered merchandise in a qualifying manner (as or for use in civil aircraft) need not be maintained. The commenter asked whether this means that the importer's intent regarding imported civil aircraft merchandise, rather than the importer's actual use of that merchandise, is the qualifying factor for free entry under this provision.

Customs Response:

When an importer makes a claim for duty-free admission under General Note 6 by placing the "C" indicator on the entry summary to enter an article under a tariff provision for which the rate of duty "Free C" appears in the "Special" subcolumn, the importer, under General Note 6, is deemed to certify that the article is being imported for use in civil aircraft and will be so used. While General Note 6 does not mention the intent of the importer, this claim (deemed certification) is an expression of intent. Accordingly, it is the intent of the importer, as embodied in its claim for duty-free admission, that is determinative.

Tariff provisions that implement General Note 6 (which have the "Free C" designation in the "Special" subcolumn) are not actual use tariff provisions (as described in Additional U.S. Rule of Interpretation

1(b)). Therefore, there is no requirement to furnish proof of end use within three years after the date the civil aircraft merchandise is entered, as required under Additional U.S. Rule 1(b). Also, there is no time limit as to when imported merchandise must be used in civil aircraft.

Customs notes that under 19 U.S.C. 1484(a), importers are obligated to enter merchandise using reasonable care. This obligation extends to how an importer classifies entered merchandise and determines the duty owed to Customs. This obligation certainly applies to importers entering merchandise under a claim of eligibility for duty-free civil aircraft treatment.

Comment:

Both commenters inquired about what documentation is acceptable to show the importer's intent to use entered merchandise in a qualifying manner.

Customs Response:

Initially, Customs notes that documentation is not required to be filed with the entry summary under General Note 6 but must be maintained in accordance with Part 163 of the Customs Regulations (19 CFR 163).

Regarding acceptable documentation, paragraph (b)(i)(A) of General Note 6 provides, as an eligibility requirement for claiming civil aircraft as duty-free under these provisions, that there be certification or approval of the merchandise by an appropriate airworthiness authority. Having documents that show certification or approval of the merchandise by an appropriate airworthiness authority would be acceptable to demonstrate the importer's intent. Specifically, an importer of civil aircraft merchandise that meets the requirements of General Note (6)(b)(i)(B)(1) would possess either a certificate issued by the FAA or a comparable document issued by, and showing the approval of, an airworthiness authority in the country of exportation (foreign airworthiness authority). In the latter instance, an importer should be able to show that the FAA recognizes the approval as an acceptable substitute for FAA certification.

An importer of civil aircraft merchandise that meets the requirements of General Note (6)(b)(i)(B)(2) would possess an application (or copy of an application) for an FAA airworthiness certificate submitted to (and accepted by) the FAA by an existing "type and production certificate holder" under FAA law (49 U.S.C. 44702) and the type and production certificate of the certificate holder.

An importer of civil aircraft merchandise that meets the requirements of General Note 6(b)(i)(B)(3) faces a somewhat different situation, as an application for an FAA certificate or for the approval of a foreign airworthiness authority relative to that merchandise will be submitted in the future. Thus, this importer will not possess a certificate or an approval, nor evidence that an application for a certificate or an approval has been submitted. However, this importer should possess the following documentation: (1) evidence tending to show that an existing type and production certificate holder will submit an application for

certification to the FAA or will seek approval from a foreign airworthiness authority; (2) the type and production certificate of the type and production certificate holder issued by the FAA; and (3) evidence showing that there is pending the completion of design or other technical requirements stipulated by the FAA.

Some additional evidence may be available and, if so, must be maintained in accordance with General Note 6(a)(i), such as evidence having to do with the importer's estimate of the quantities of parts, components, and subassemblies as are required to meet the design and technical requirements stipulated by the FAA, in accordance with the limitation of General Note 6(b)(iii).

Importers should endeavor to have and maintain whatever evidence is available in all of these cases to show compliance with the requirements of General Note 6 and the regulations.

Comment:

A comment concerned whether FAA approval is required for all imported goods for which duty-free admission is claimed. The commenter noted that a recent Customs audit interpretation concluded that a part not covered by a certificate would qualify for duty-free treatment if it could be shown that the part went into an aircraft qualfiying as a civil aircraft under General Note 6.

Customs Response:

All merchandise entered under General Note 6 requires an FAA airworthiness certification or the approval of a foreign airworthiness authority recognized as acceptable by the FAA in accordance with paragraph (b)(i)(B)(1) of General Note 6, or evidence that airworthiness certification/approval has been or will be applied for in accordance with paragraphs (b)(i)(B)(2) or (b)(i)(B)(3) of the general note. Merchandise must comply with one of these airworthiness certification provisions in order to meet the definition of General Note 6(b). Merchandise that fails to so comply is not eligible for duty-free treatment under these provisions.

Comment:

Another comment concerned safeguards for ensuring that merchandise entered duty-free as civil aircraft merchandise is used as intended. Specifically, the commenter asked if there will be measures in place to guarantee that merchandise imported by a party with the intent that it be used in civil aircraft will be so used when it is sold after entry to a distributor rather than an end user.

Customs Response:

There will be no special measures to ensure that merchandise imported with the intent to be used in a qualifying manner under the general note are so used in the future. As tariff provisions affected by the general note are not actual use tariff provisions, importers entering merchandise under these provisions are not required to submit proof of

actual use. Customs will enforce General Note 6 with audits and the port director's authority to request verifying documentation at any time.

Customs believes that the safeguards reside in the certification process itself, as the airworthiness certification or approval measures provide reasonable assurance that merchandise imported duty-free as civil aircraft merchandise is likely intended for such use and will likely be used in accordance with that certificate or approval (including those situations where the certificate or approval has been applied for or will be applied for in the future). Of course, importers who mistakenly enter merchandise duty-free under the general note should report the correction to Customs in accordance with the regulations.

Comment:

Another comment concerned proposed § 10.183(c), which pertains to making a claim for duty-free admission under General Note 6. Under this section, merchandise previously exported with benefit of drawback is not precluded from qualifying for duty-free treatment as civil aircraft merchandise. The commenter stated that this principle should be expanded to assure importers that free entry of civil aircraft merchandise will not be precluded where qualifying merchandise has previously been exported in the following circumstances: (1) from continuous Customs custody with remission, abatement, or refund of duty; (2) in compliance with any law of the United States or regulation of any federal agency requiring exportation; or (3) after manufacture or production in the United States in a Customs bonded warehouse or foreign trade zone or under heading 9813.00.05, HTSUS, pertaining to articles admitted into the United States free of duty and under bond to be repaired, altered, or processed. The commenter stated that previous exportation under the foregoing various circumstances precludes free entry under other provisions of law (such as Chapter 98, HTSUS, subchapter II, U.S. Note 1).

The commenter requested the addition of language to proposed § 10.183(c) to prevent the preclusion of free entry of civil aircraft parts previously exported under any of the circumstances described above.

Customs Response:

Customs does not see the need to add to the regulation the recommended language. Free entry under the civil aircraft agreement is not expressly precluded under any of these circumstances, and Customs is not aware of, nor has the commenter cited, instances when free entry was denied on account of merchandise having been previously exported as described.

Comment:

A commenter requested that the first sentence of proposed section 10.183(e) be changed by deleting the words "any additional documentation Customs may require to verify the claim for duty-free admission, including." As changed, the only documentary requirement will be the written order or contract and the evidence of FAA (or other airworthiness authority) certification. The commenter contended that these doc-

uments serve to verify the claim sufficiently and that the "additional documentation" language creates uncertainty as to whether other documentation will be required. If Customs desires other documentation, stated the commenter, it should specify the nature of that documentation.

Customs Response:

It is possible that additional documentation, other than the order or contract and an FAA certification (or foreign airworthiness authority approval), may be involved. The importer may have to show possession of a type or production certificate, for example. In addition, other documentation may be required in instances where an application for an airworthiness certification or approval has not yet been filed. The demand for additional information is limited to documentation tending to sustain the duty-free claim under the program. While Customs believes that this will not lead to uncertainty, it is amending the language of proposed § 10.183(e) to be more precise.

Comment:

A commenter requested the deletion of the third sentence of proposed § 10.183(e) pertaining to the proscription of a claim for duty-free treatment under General Note 6 when the importer is not in possession of required documentation at the time of entry. This section of the proposed regulation provides that if an importer is not in possession of required documents at the time of entry, it should not then make a claim for duty-free admission, but may later make the claim under § 10.183(f) which allows a post-entry claim.

The commenter contended that the physical possession of supporting documentation should not be a prerequisite to the claim for duty-free treatment. Physical possession of documentation required to support other duty-free claims under Part 10 is not required, stated the commenter, and there is no legitimate need to include such a requirement here. Such a requirement, claimed the commenter, is tantamount to reinstating the certification filing requirement that Congress removed when it amended General Note 6.

Customs Response:

Customs agrees that other duty-free provisions under Part 10 of the regulations do not explicitly provide that importers must possess required documents at the time of entry. Rather, these provisions provide that the importer must maintain the required documentation in accordance with Part 163 of the regulations and produce it upon Customs request. Some provisions under Part 10 provide that failure to produce documentation upon request results in denial of duty-free treatment. Customs therefore believes that the civil aircraft program under General Note 6 can be administered and enforced adequately using similar measures.

Thus, proposed § 10.183(e) is modified in this document by removing language specifying that importers must be in possession of required

documents at the time of entry in order to claim duty-free treatment under the general note. The regulation, as amended in this document, retains the requirement that importers must maintain supporting documentation in accordance with Part 163 of the regulations and adds that maintenance of these records is also in accordance with paragraph (a)(i) of General Note 6. The amended regulation also adds language providing that port directors may request production of supporting documentation at any time and that failure to produce sufficient documentation upon request, during the five year retention period, will result in the loss of duty-free treatment.

Customs modifies the proposed regulation in this way to notify the public that the civil aircraft program under General Note 6 will be administered and enforced through document review under the authority of Customs audits or a demand by the port director in circumstances the port director deems appropriate. It is Customs position, however, that importers must be able to verify claims for duty-free admission under the general note at any time Customs calls upon them to do so, including at the time of entry should that occur. It is thus best that importers have possession of supporting documentation at the time of entry.

Comment:

The last sentence of proposed § 10.183(e) provides that proof of the imported civil aircraft merchandise's end use need not be maintained by the importer. A commenter requested that this sentence be amended to provide that proof of end use also need not be furnished to Customs. This change, stated the commenter, will further confirm that civil aircraft tariff provisions (those with the indicator "Free C" in the Special subcolumn designating duty free entry under General Note 6) are not "actual use" provisions subject to the requirements of Additional U.S. Rule of Interpretation 1(b), HTSUS, which requires that proof of end use of the merchandise be submitted to Customs within three years of entry.

Customs Response:

Customs disagrees. None of the civil aircraft provisions in the HTSUS are actual use provisions, and the language of proposed § 10.183(e) is not ambiguous in this regard. Customs believes that this requested change is unnecessary.

Comment:

A commenter asserted that proposed § 10.183(g) should be deleted, as proposed § 10.183(e) already makes clear that documentation supporting duty-free admission must be maintained in accordance with Part 163 of the Customs Regulations (19 CFR Part 163). The commenter pointed out that under the provisions of Part 163, documentation is subject to Customs requests for information, compliance assessments, investigations, and other forms of Customs inquiry. Accordingly, there is no reason for special monitoring or auditing under § 10.183. Civil air-

craft importers should not be subject to any greater or lesser scrutiny than any other importers.

Customs Response:

Customs disagrees. Customs has always been charged with the obligation to enforce the provisions of the civil aircraft agreement (as implemented by General Note 6, HTSUS) to protect the revenue, and there is nothing improper in making explicit in the regulation Customs intent to do so by monitoring and auditing entries. At worst, § 10.183(g) is redundant, but Customs believes it is worthy to set forth in the regulation that entries will be monitored.

CONCLUSION

After analysis of the comments received, as set forth above, and further review of the matter, Customs has determined that the proposed amendments should be adopted as a final rule with the changes discussed above and as set forth below.

EXECUTIVE ORDER 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

REGULATORY FLEXIBILITY ACT

This amendment will make importations of civil aircraft merchandise less burdensome for importers than is the case under current regulations. Accordingly, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*.), it is certified that the amendments to the Customs Regulations in this final rule will not have a significant economic impact on a substantial number of small entities. Thus, these amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

PAPERWORK REDUCTION ACT

The collection of information contained in this notice has previously been reviewed and approved by the Office of Management and Budget (OMB) under OMB control number 1515–0065 (Entry Summary), 1515–0069 (Immediate Delivery Application), and 1515–0144 (Customs Bond Structure). This rule does not substantially change the existing approved information collection. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

DRAFTING INFORMATION

The principal author of this document was Bill Conrad, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices contributed in its development.

LIST OF SUBJECTS IN 19 CFR PART 10

Aircraft, Customs duties and inspection, Entry, Reporting and recordkeeping requirements.

AMENDMENTS TO THE REGULATIONS

For the reasons stated in the preamble, Part 10 of the Customs Regulations (19 CFR Part 10) is amended as follows:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 is revised, and the specific authority citation for § 10.183 is added, to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

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Section 10.183 also issued under 19 U.S.C. 1202 (General Note 6, HTSUS);

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2. Section 10.183 is revised to read as follows:

§ 10.183 Duty-free entry of civil aircraft, aircraft engines, ground flight simulators, parts, components, and subassemblies.

(a) *Applicability.* Except as provided in paragraph (b) of this section, this section applies to aircraft, aircraft engines, and ground flight simulators, including their parts, components, and subassemblies, that qualify as civil aircraft under General Note 6(b) of the Harmonized Tariff Schedule of the United States (HTSUS) by meeting the following requirements:

(1) The aircraft, aircraft engines, ground flight simulators, or their parts, components, and subassemblies, are used as original or replacement equipment in the design, development, testing, evaluation, manufacture, repair, maintenance, rebuilding, modification, or conversion of aircraft; and

(2) They are either:

(i) Manufactured or operated pursuant to a certificate issued by the Administrator of the Federal Aviation Administration (FAA) under 49 U.S.C. 44704 or pursuant to the approval of the airworthiness authority in the country of exportation, if that approval is recognized by the FAA as an acceptable substitute for the FAA certificate;

(ii) Covered by an application for such certificate, submitted to and accepted by the FAA, filed by an existing type and production certificate holder pursuant to 49 U.S.C. 44702 and implementing regulations (Federal Aviation Administration Regulations, title 14, Code of Federal Regulations); or

(iii) Covered by an application for such approval or certificate which will be submitted in the future by an existing type and production certificate holder, pending the completion of design or other technical requirements stipulated by the FAA (applicable only to the quantities of parts, components, and subassemblies as are required to meet the stipulation).

(b) *Department of Defense or U.S. Coast Guard use*. If purchased for use by the Department of Defense or the United States Coast Guard, aircraft, aircraft engines, and ground flight simulators, including their parts, components, and subassemblies, are subject to this section only if they are used as original or replacement equipment in the design, development, testing, evaluation, manufacture, repair, maintenance, rebuilding, modification, or conversion of aircraft and meet the requirements of either paragraph (a)(2)(i) or (a)(2)(ii) of this section.

(c) *Claim for admission free of duty.* Merchandise qualifying under paragraph (a) or paragraph (b) of this section is entitled to duty-free admission in accordance with General Note 6, HTSUS, upon meeting the requirements of this section. An importer will make a claim for duty-free admission under this section and General Note 6, HTSUS, by properly entering qualifying merchandise under a provision for which the rate of duty "Free (C)" appears in the "Special" subcolumn of the HTSUS and by placing the special indicator "C" on the entry summary. The fact that qualifying merchandise has previously been exported with benefit of drawback does not preclude free entry under this section.

(d) *Importer certification*. In making a claim for duty-free admission as provided for under paragraph (c) of this section, the importer is deemed to certify, in accordance with General Note 6(a)(ii), HTSUS, that the imported merchandise is, as described in paragraph (a) or paragraph (b) of this section, a civil aircraft or has been imported for use in a civil aircraft and will be so used.

(e) *Documentation*. Each entry summary claiming duty-free admission for imported merchandise in accordance with paragraph (c) of this section must be supported by documentation to verify the claim for duty-free admission, including the written order or contract and other evidence that the merchandise entered qualifies under General Note 6, HTSUS, as a civil aircraft, aircraft engine, or ground flight simulator, or their parts, components, and subassemblies. Evidence that the merchandise qualifies under the general note includes evidence of compliance with paragraph (a)(1) of this section concerning use of the merchandise and evidence of compliance with the airworthiness certification requirement of paragraph (a)(2)(i), (a)(2)(ii), or (a)(2)(iii) of this section, including, as appropriate in the circumstances, an FAA certification; approval of airworthiness by an airworthiness authority in the country of export and evidence that the FAA recognizes that approval as an acceptable substitute for an FAA certification; an application for a certification submitted to and accepted by the FAA; a type and production certificate issued by the FAA; and/or evidence that a type and production certificate holder will submit an application for certification or approval in the future pending completion of design or other technical requirements stipulated by the FAA and of estimates of quantities of parts, components, and subassemblies as are required to meet design and technical requirements stipulated by the FAA. This documentation need not be filed with the entry summary but must be maintained in ac-

cordance with the general note and with the recordkeeping provisions of Part 163 of this chapter. Customs may request production of documentation at any time to verify the claim for duty-free admission. Failure to produce documentation sufficient to satisfy the port director that the merchandise qualifies for duty-free admission will result in a denial of duty-free treatment and may result in such other measures permitted under the regulations as the port director finds necessary to more closely monitor the importer's importations of merchandise claimed to be duty-free under this section. Proof of end use of the entered merchandise need not be maintained.

(f) *Post-entry claim*. An importer may file a claim for duty-free treatment under General Note 6, HTSUS, after filing an entry that made no such duty-free claim, by filing a written statement with Customs any time prior to liquidation of the entry or prior to the liquidation becoming final. When filed, the written statement constitutes the importer's claim for duty-free treatment under the general note and its certification that the entered merchandise is a civil aircraft or has been imported for use in a civil aircraft and will be so used. In accordance with General Note 6, HTSUS, any refund resulting from a claim made under this paragraph will be without interest, notwithstanding the provision of 19 U.S.C. 1505(c).

(g) *Verification*. The port director will monitor and periodically audit selected entries made under this section.

ROBERT C. BONNER,
Commissioner of Customs.

Approved: June 3, 2002.

TIMOTHY E. SKUD,
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